

APPEAL NO. 032984
FILED DECEMBER 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 23, 2003. The hearing officer determined that the compensable injury of appellant (claimant) did not extend to include the diagnoses of herniated disk in the lumbar spine and a left shoulder sprain, and that he had disability from March 5 through September 23, 2003. Claimant appealed the determination regarding extent of injury on sufficiency grounds. Claimant also contended that the hearing officer abused his discretion in refusing to add an issue regarding carrier waiver. Claimant did not appeal the disability determination. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer abused his discretion in failing to add an issue regarding carrier waiver. Claimant's attorney represented that carrier waiver was discussed at the benefit review conference (BRC), but the benefit review officer (BRO) refused to add the issue. However, he asked claimant about this and claimant did not say that he recalled the discussion. Carrier's attorney did not state whether the issue was discussed at the BRC and the BRC report does not mention it. The hearing officer considered this assertion and apparently rejected the notion that this issue was actually discussed at the BRC. Claimant did not file a timely response to the BRC report. Claimant did file a timely request to add the issue, received by the Texas Workers' Compensation Commission on September 4, 2003. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)). Therefore, the hearing officer had the discretion to add the issue upon a showing of good cause. The good cause stated in the request was that the BRO was asked to add the issue and the BRO did not. The hearing officer apparently determined that the issue was not discussed at the BRC and the hearing officer did not find good cause. We conclude that the hearing officer did not abuse his discretion in determining that the claimant failed to show good cause for adding the requested issue. See Texas Workers' Compensation Commission Appeal No. 021955, decided August 21, 2002.

We have reviewed the complained-of determination regarding extent of injury and conclude that this issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ILLINOIS NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge